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10 *[Proposed] Counsel for Whitton Corporation*

11 **UNITED STATES BANKRUPTCY COURT**

12 **DISTRICT OF NEVADA**

13 In re

14 WHITTON CORPORATION,
15 a Nevada corporation,

16 Debtor.
17

Case No.: BK-S-10-32680-BAM

Chapter 11

16 **OMNIBUS DECLARATION OF TOM E.
17 HALLETT FILED IN SUPPORT OF
18 FIRST DAY MOTIONS**

Hearing Date: OST PENDING

Hearing Time: OST PENDING

19
20 TOM E. HALLETT, being duly sworn, hereby deposes and declares under penalty of
21 perjury:

22 1. I am over the age of 18, am mentally competent, and if called upon to testify as to
23 the statements made herein, could and would do so.

24 2. I am the president and sole director of Whitton Corporation (the "Debtor" or
25 "Whitton"). Except as otherwise limited herein, I make the following statements based upon my
26 personal knowledge, belief and where applicable, upon the business records of Debtor in support
27 of the motions filed by Debtor in the above-captioned chapter 11 bankruptcy case. All
28 statements below referencing or describing, individually or collectively, the Secured Lenders

(defined below) and are qualified in their entirety by the terms and conditions of the applicable loan documents. All statements below referencing valuations and financial projections of Debtor's properties are based on Debtor's books and records and upon the advice of Province Real Estate Advisors, LLC ("Province"), Debtor's proposed financial advisors. All statements containing legal conclusions herein are based on advice of Debtor's proposed counsel.

3. On December 5, 2010 (the "Petition Date"), Whitton filed a voluntary petition for relief under chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code"), in the United States Bankruptcy Court for the District of Nevada (the "Court"); thereby initiating Whitton's chapter 11 proceeding (the "Chapter 11 Case").¹ The following is a summary of Debtor's capital structures, history, operations, events leading to the Chapter 11 Case, and the relief requested by Debtor's "first day" motions.

A. Debtor's History and Business Operations

4. I founded Whitton (f/k/a South Tech, LLC) in 1995 as a full service commercial real estate enterprise encompassing sales and leasing, marketing, design, estimating, and general contracting. I have over forty years of broad experience and advancement in general management, real estate development, real estate investment and analysis. I am a lifelong business owner and entrepreneur in a variety of ventures.

5. Debtor's property portfolio consists of twelve high quality properties located in Las Vegas, Henderson, North Las Vegas, and Reno/Sparks, Nevada. Debtor's property portfolio offers a blended property type consisting of office, warehouse, and light industrial space. Seventy-five percent of the portfolio consists of concrete tilt-up structures, with the balance being block, metal, or wood construction. The average age of the portfolio properties is twelve years, with many buildings constructed in the mid-2000s.

6. Debtor's business strategy has been to differentiate itself from its competition by providing a vertically integrated ownership, management, leasing and maintenance business

¹ I was informed and believed that the property owned by South Tech Simmons 3040C, LLC ("Simmons") was foreclosed in November, 2010. After learning that the foreclosure sale had not been conducted, Simmons filed its chapter 11 bankruptcy case in this court on December 8, 2010, case number 10-32857-BAM.

1 catering to primarily the light industrial tenant. Whitton's marketing efforts focus on eliminating
 2 a tenant's issues in dealing with third-party property managers, maintenance crews, leasing
 3 agents, and construction/maintenance contractors.

4 7. Debtor's current financial crisis is illustrated by its proposed financial advisors'
 5 most recent consolidated income projections for 2011. Based on current occupancy rates, Debtor
 6 expects to generate \$3.9 million in annual revenue for 2011. Less bad rents and bad common
 7 area maintenance recoveries, Debtor's net annual revenue is projected to be reduced by \$500,000
 8 to \$3.4 million. After accounting for Debtors' estimated common area maintenance and
 9 occupancy expenses of \$2.0 million, Debtor's projected net operating income before
 10 administrative expenses is \$1.3 million while its debt service as currently structured is
 11 approximately \$3.2 million.

12 8. Debtor's financial crisis has been amplified by the fact that court ordered
 13 receivers have been appointed for nine of Debtor's properties thereby depriving Debtor of all
 14 cash flow generated by those properties and causing further deterioration in occupancy.

15 **B. Debtor's Capital Structure**

16 9. Whitton is a corporation formed under the laws of the state of Nevada on
 17 December 7, 1995. Effective December 3, 2010, the following former subsidiaries and affiliates
 18 of Whitton (each an "Affiliate" and collectively, the "Affiliates"), merged (the "Merger") with
 19 Whitton: (i) South Tech Construction Corp.; (ii) South Tech Real Estate Services, LLC; (iii)
 20 TEH Investments, LLC; (iv) Desert Pacific Properties, LLC; (v) South Tech – Russell, LLC; (vi)
 21 South Tech Polaris, LLC; (vii) South Tech – Annie Oakley, LLC; (viii) South Tech – Seven
 22 Hills, LLC; (ix) South Tech – Diablo, LLC; (x) South Tech Partners, LLC; (xi) South Tech –
 23 Cheyenne West 2455A, LLC; (xii) South Tech – Glendale 155; (xiii) South Tech – Greg; (xiv)
 24 South Tech – Brooks 2750K, LLC; (xv) South Tech – Cheyenne 2475, LLC; (xvi) South Tech –
 25 Rio, LLC; (xvii) South Tech – Dean Martin 7625, LLC; and (xviii) South Tech – Stephanie
 26 1000. After the Merger, Whitton was the surviving entity and successor-in-interest, assuming
 27 the operations, assets, and liabilities of the Affiliates. An organizational chart including
 28 information about the properties and the secured lenders is attached hereto as **Exhibit 1**.

1 10. Prior to the Merger, each Affiliate was an operating entity under Whitton's
2 corporate umbrella. The Merger was consummated to consolidate Whitton's operations as well
3 as simplify the enterprise's balance sheet for purposes of its reorganization and deleveraging
4 through the bankruptcy process.

5 11. As of the Petition Date, Debtor's balance sheet was highly leveraged with a total
6 of twelve outstanding secured loans (each a "Loan" and collectively, the "Loans") from five
7 separate secured creditors (collectively, the "Secured Lenders"). Each of the Loans is secured by
8 one of Debtor's twelve commercial properties, which are located in Las Vegas, Henderson,
9 North Las Vegas, and Reno/Sparks, Nevada. Prior to the Merger, each of the commercial
10 properties was owned by an operating Affiliate under the Whitton corporate umbrella. Now,
11 each is owned and operated by Whitton and reported on Whitton's balance sheet.

12 12. In the aggregate, as of today, Debtor owns over 485,000 square feet of office,
13 retail, light industrial, warehouse, or flexible use real estate of which approximately 69% is
14 occupied. The total purchase price paid for all properties was approximately \$64.2 million with
15 approximately \$25 million of initial equity and \$39.2 financed through secured debt. Finally,
16 Debtor estimates approximately \$37.2 of its secured debt principal is outstanding.

17 13. The recent downturn in Nevada's real estate market caused Debtor's debt-to-
18 equity ratio to increase to approximately 2:1, creating an untenable debt load for the company.
19 Further, failure to service any of its secured debt caused Debtor to default on all Loans, and nine
20 properties have been forced into receiverships.

21 14. A description of each of Debtor's twelve operating properties, including their
22 size, use, occupancy rate, purchase price, and a summary of their financing information is set
23 forth below:

24 a) "Annie Oakley" (f/k/a South Tech – Annie Oakley, LLC) - 26,941
25 square feet of office and flexible use space located at Sunset Road and Annie
26 Oakley Drive in Las Vegas, Nevada. The current occupancy rate is
27 approximately 66%. Annie Oakley was purchased in January 2008 for \$7.275
28 million. Of the original purchase price, \$4 million was financed through a loan
secured by a deed of trust currently held by Bank of America, NA ("B of A").
Debtor's books and records indicate an outstanding loan balance of approximately

1 \$3.6 million. While no receiver had been appointed, B of A filed a complaint
2 seeking the appointment of a receiver on November 11, 2010.

3 b) “Brooks” (f/k/a South Tech – Brooks 2750K, LLC) - 28,710
4 square feet of light industrial space located at N. Simmons Street and W.
5 Cheyenne Avenue in Las Vegas, Nevada. The current occupancy rate is
6 approximately 52%. Brooks was purchased in August 2005 for \$3 million. Of
7 the original purchase price, \$2.1 million was financed through a loan secured by a
8 deed of trust currently held by German American Capital Corp. (“German
American”). Debtor’s books and records indicate an outstanding loan balance of
9 approximately \$2.02 million. There is a court appointed receiver in possession of
10 this property.

11 c) “Cheyenne 2455” (f/k/a South Tech – Cheyenne West 2455A,
12 LLC) - 27,363 square feet of office space located at N. Simmons Street and W.
13 Cheyenne Avenue in Las Vegas, Nevada. The current occupancy rate is
14 approximately 100%. Cheyenne 2455 was purchased in August 2005 for \$4.756
15 million. Of the original purchase price, approximately \$2.96 million financed
16 through a secured loan secured by a deed of trust is currently held by LSREF2
17 NOVA Investments, LLC (“LSREF2”).² Debtor’s books and records indicate an
18 outstanding loan balance of approximately \$2.8 million. There is a court
19 appointed receiver in possession of this property.

20 d) “Cheyenne 2475” (f/k/a South Tech – Cheyenne 2475, LLC) -
21 27,196 square feet of flexible use and light industrial space located at 2475 W.
22 Cheyenne Avenue in Las Vegas, Nevada. The current occupancy rate is
23 approximately 70%. Cheyenne 2475 was purchased in August 2005 for \$3.3456
24 million. Of the original purchase price, \$2.74 million was financed through a
25 secured loan secured by a deed of trust currently held by The Bank of Las Vegas
26 (“BLV”).

27 e) “Dean Martin 7625” (f/k/a South Tech – Dean Martin 7625, LLC)
28 - 14,524 square feet of office space located at S. Dean Martin Drive and W. Warm
Springs Road in Las Vegas, Nevada. The current occupancy rate is
approximately 7%. Dean Martin 7625 was purchased in April 2006 for \$3.525
million. Of the original purchase price, \$2.1 million was financed through a
secured loan secured by a deed of trust currently held by LSREF2. Debtor’s
books and records indicate an outstanding loan balance of approximately \$2
million. There is a court appointed receiver in possession of this property.

29 f) “Diablo” (f/k/a South Tech – Diablo, LLC) - 33,724 square feet of
flexible use and light industrial space located at W. Russell Road and S. Valley
View Boulevard in Las Vegas, Nevada. The current occupancy rate is
approximately 83%. Diablo was purchased in March 2000 for \$2.8 million. Of

² The previous beneficiaries on the deed of trust for the following properties were Citibank (West) FSB and Citibank, NA (“Citibank”), successor-by-merger to Citibank (West) FSB: Cheyenne 2455; Dean Martin 7625; Diablo; Russell; and, allegedly, Stephanie.

1 the original purchase price, \$2.4 million was financed through a secured loan
2 secured by a deed of trust currently held by LSREF2. Debtor's books and records
3 indicate an outstanding loan balance of approximately \$2.18 million. There is a
4 court appointed receiver in possession of this property.

5 g) "Glendale" (f/k/a South Tech – Glendale 155) - 57,679 square feet
6 of flexible use, light industrial, and warehouse space located at E. Glendale
7 Avenue and S. Stanford Way in Sparks, Nevada. The current occupancy rate is
8 approximately 59%. Glendale was purchased in December 2005 for \$5.01
9 million. Of the original purchase price, \$2.6 million was financed through a loan
10 secured by a deed of trust currently held by German American. Debtor's books
11 and records indicate an outstanding loan balance of approximately \$2.48 million.
12 There is a court appointed receiver in possession of this property.

13 h) "Greg" (f/k/a South Tech – Greg) - 69,236 square feet of flexible
14 use, light industrial, and warehouse space located at Glendale Avenue and
15 Industrial Way in Sparks, Nevada. The current occupancy rate is approximately
16 60%. Greg was purchased in December 2005 for \$4.675 million. Of the original
17 purchase price, \$3.5 million was financed through a loan secured by a deed of
18 trust currently held by German American. Debtor's books and records indicate an
19 outstanding loan balance of approximately \$3.3 million. There is a court
20 appointed receiver in possession of this property.

21 i) "Kleppe" (f/k/a South Tech – Kleppe, LLC) - 80,515 square feet of
22 office, light industrial, and warehouse space located at Kleppe Lane and Deming
23 Way in Sparks, Nevada. The current occupancy rate is approximately 49%.
24 Kleppe was purchased in January 2006 for \$5.17 million. Of the original
25 purchase price, \$2.9 million was financed through a secured loan secured by a
26 deed of trust currently held by US Bank, NA ("US Bank"). Debtor's books and
27 records indicate an outstanding loan balance of approximately \$2.67 million.

28 j) "Russell" (f/k/a South Tech – Russell, LLC) – 32,757 square feet
of office, warehouse, and flexible use space located at W. Russell Road and S.
Valley View Boulevard in Las Vegas, Nevada. The current occupancy rate is
approximately 100%. Russell was purchased in May 1998 for \$2.6 million. Of
the original purchase price, \$2 million financed through a secured loan secured by
a deed of trust currently held by LSREF2. Debtor's books and records indicate an
outstanding loan balance of approximately \$1.8 million. There is a court
appointed receiver in possession of this property.

k) "Seven Hills" (f/k/a South Tech – Seven Hills, LLC) - 26,399
square feet of retail space located at 7 Hills Drive and W. Horizon Ridge Parkway
in Henderson, Nevada. The current occupancy rate is approximately 70%. Seven
Hills was purchased in February 2008 for \$16 million. Of the original purchase
price, \$8 million was financed through a secured loan secured by a deed of trust
currently held by LSREF2. Debtor's books and records indicate an outstanding
loan balance of approximately \$8 million. There is a court appointed receiver in
possession of this property.

1 l) “Stephanie” (f/k/a South Tech – Stephanie) - 60,360 square feet of
2 light industrial and warehouse space located at Stephanie Lane and Patrick Place
3 in Henderson, Nevada. The current occupancy rate is approximately 100%.
4 Stephanie was purchased in April 2006 for \$6.1 million. Of the original purchase
5 price, \$3.9 million was financed through a secured loan secured by a deed of trust
currently held by LSREF2. Debtor’s books and records indicate an outstanding
loan balance of approximately \$3.67 million. There is a court appointed receiver
in possession of this property.

6 15. In addition to the secured loans used to finance each of Whitton’s portfolio
7 properties, on December 3, 2010, Whitton entered into a secured loan agreement (the “Bridge
8 Loan”) with Umbra Partners, LLC (“Umbra”) in order to obtain necessary financing to cover
9 certain of the expenses related to the Chapter 11 Case. Umbra provided \$300,000 in financing in
10 exchange for (i) that certain convertible secured promissory note dated December 3, 2010 (the
11 “Umbra Note”); (ii) a Short Form Deed of Trust and Assignment of Rents encumbering certain
12 real property commonly known as Clark County, Nevada Assessor Parcel Number 139-17-510-
13 032; (iii) Short Form Deed of Trust and Assignment of Rents encumbering certain real property
14 commonly known as Clark County, Nevada Assessor Parcel Numbers 139-17-510-042 and 139-
15 17-510-043 (collectively, the “Umbra Collateral”); and (iv) the right of first refusal to provide
16 debtor-in-possession financing for the Chapter 11 Case. Prior to the Bridge Loan, the Umbra
17 Collateral was unencumbered and the proceeds of the loan are only being used to fund certain
18 expenses related to the Chapter 11 Case. Debtor’s financial advisors value this property at
19 \$300,000 based on comparable sales transactions.

20 16. On December 3, 2010, BLV and Whitton entered into a restructuring and lock-up
21 agreement (the “Lock-Up Agreement”) whereby BLV agree to support Whitton’s plan of
22 reorganization in the Chapter 11 Case, provided that Whitton adheres to the milestones set forth
23 in the Lock-Up Agreement and successfully confirms a plan of reorganization that conforms to
24 the restructuring plan term sheet attached as Exhibit A to the Lock-Up Agreement. A copy of
25 the Lock-Up Agreement is attached hereto as **Exhibit 2**.

26 ///

27 ///

1 **C. Events Leading to Bankruptcy**

2 **1. Market Conditions**

3 17. The current global financial crisis has had a particularly grave impact on the
4 Nevada real estate market. As a result, Debtor's operations have been severely impacted by this
5 challenging economic environment. Vacancy rates and uncollectable accounts have risen
6 dramatically within the company's real estate portfolio, which has constricted cash flow. This
7 cash flow restriction has negatively impacted Debtor's ability to service the Loans.

8 **2. Loan Defaults and The Appointment of Receivers**

9 18. After the appointment of the receivers to the Brooks, Cheyenne 2455, Dean
10 Martin 7625, Diablo, Glendale, Greg, Russell, Seven Hills, and Stephanie portfolio properties,
11 Debtor suffered a severe blow to its operating cash flow. Further, foreclosure sales have been
12 scheduled and noticed for seven of the properties currently in receivership.

13 19. In addition to the deleveraging of Debtor's balance sheet, the impending sale of
14 the majority of Debtor's portfolio properties precipitated the commencement of the Chapter 11
15 Case. Prepetition, Debtor's financial advisors and Debtor received expressions of interest from
16 three potential "white knights" in investing in Debtor.

17 **D. Emergency Motion for Order Directing Joint Administration of Related**
18 **Cases Pursuant to Bankruptcy Rule 1015(b)**

19 20. Through their own respective motions, Whitton and its affiliate, Simmons, each
20 request joint administration of their cases with respect to purely administrative matters only,
21 including a joint pleadings docket, a joint pleadings caption, and combined notices to creditors.
22 Whitton does not request substantive consolidation of the Whitton and Simmons estates at this
23 time.

24 21. Joint administration clearly is warranted in the Whitton and Simmons bankruptcy
25 cases because of the following facts:

26 a. Whitton and Simmons are affiliates, as that term is defined in

27 Section 101(2)(B) of the Bankruptcy Code. Whitton is the sole member of
28

1 Simmons, and Tom Hallett is the sole manager of Simmons. Tom Hallett is
2 also president of Whitton;

3 b. Whitton and Simmons share the same management;

4 c. There is overlap in the creditor bodies of Whitton and
5 Simmons. Joint administration will avoid otherwise unnecessary and
6 expensive duplication of effort and papers caused by preparing and serving
7 the same creditors with sets of differently captioned but otherwise identical
8 papers; and

9 d. It is likely that numerous motions filed in the Whitton and
10 Simmons cases will concern both Whitton and Simmons. Again, joint
11 administration will avoid unnecessary and expensive duplication of effort and
12 papers caused by preparing the same motion with different captions.

13 22. Whitton does not believe that an actual conflict will arise between the estates of
14 Whitton and Simmons.

15 **F. Motion Pursuant to 11 U.S.C. § 521, Fed. R. Bankr. P. 1007 and Local Rule**
16 **1007 for Order Extending Time to File Schedules and Statement for**
17 **Financial Affairs**

18 23. Debtor requests an extension of the 14-day period to file the schedules and
19 statement of financial affairs (“Statements and SOFA”) by, at least, an additional 30-day period
20 without prejudice to Debtor’s ability to request additional time should it become necessary.

21 24. On the Petition Date, Debtor filed with this Court a list of creditors holding the
22 twenty largest unsecured claims against Debtor’s estate. Due to the large number of pressing
23 matters present in the early stages of this Chapter 11 Case, Debtor anticipates that it will be
24 unable to complete the Schedules and SOFA in the 14-day time period established under
25 Bankruptcy Rule 1007(c).

26 25. To prepare its Schedules and SOFA, Debtor must compile financial information
27 from books, records, and documents relating to its assets, contracts and claims of creditors, much
28 of which is in the possession of prepetition state court appointed receivers. This information is
voluminous and assembling the necessary information requires a significant expenditure of time

1 and effort on the part of Debtor and its employees. While Debtor, with the help of professional
2 advisors, is working diligently and expeditiously on the preparation of the Schedules and SOFA,
3 resources are limited.

4 26. Debtor, with the aid of its professional advisors, has participated in extensive
5 negotiations with certain of Debtor's secured lenders and with potential new capital providers,
6 which successfully resulted in the out-of-court resolution of two commercial property loans and
7 the consummation of a new prepetition loan that funded the preparation and filing of Debtor's
8 chapter 11 bankruptcy proceeding. Additionally, such prepetition lender and other capital
9 sources are in the process of completing their due diligence with Debtor and its professional
10 advisors' assistance, with a goal to provide the emergence financing for Debtor.

11 27. In view of the extensive negotiations with certain of Debtor's secured
12 lenders and potential new capital providers, the amount of work entailed in completing the
13 Schedules and SOFA and the competing demands upon Debtor's employees and professionals
14 during the initial postpetition period, Debtor will not be able to properly and accurately complete
15 the Schedules and SOFA within the 14-day time period established under Bankruptcy Rule
16 1007(c). Debtor anticipates that its early efforts at negotiating with secured lenders and potential
17 new capital providers will lead to favorable results for its creditors as the bankruptcy progresses,
18 notwithstanding that these efforts will make it impossible to timely complete the Schedules and
19 SOFA. In any event, creditors and other parties in interest will not be harmed by the proposed
20 extension of the filing deadline because, even under the extended deadline, the Schedules and
21 SOFA would be filed in advance of any bar date or other significant event in this Chapter 11
22 Case.

23 28. Accordingly, Debtor submits that, based upon the amount of information that
24 must be assembled and compiled, the limited resources available and the other more pressing
25 items that must be addressed at the inception of this Chapter 11 Case, good and sufficient cause
26 exists for granting the requested extension of time. At present, Debtor anticipates that it will
27 require at least an additional thirty days to complete the Schedules and SOFA. Debtor, therefore,
28

1 requests that the Court extend the filing period to and including January 20, 2011, without
2 prejudice to Debtor's ability to request additional time should it become necessary.

3 **G. Application for Order Authorizing Employment and Retention of Fox**
4 **Rothschild LLP as Debtor's Reorganization Counsel Effective as of the**
5 **Petition Date**

6 29. Debtor wishes to employ Fox Rothschild LLP ("Fox Rothschild") as its attorneys.
7 Debtor selected Fox Rothschild for the reason that such firm has considerable experience in
8 reorganization matters and is qualified to represent Debtor in this Chapter 11 Case.

9 30. Fox Rothschild was retained by Debtor prior to the Petition Date.

10 31. In connection with Fox Rothschild's representation of Debtor, I, as president of
11 Debtor, provided Fox Rothschild with \$75,000, for the benefit of Debtor, as a retainer for an
12 analysis of a potential bankruptcy filing and negotiation with Debtor's lenders. Fox Rothschild
13 is under no obligation whatsoever to repay me for any of the retainer made for the benefit of
14 Debtor. In connection with my funding of the retainers and the restructuring and Chapter 11
15 bankruptcy case of Debtor, I have acknowledged and confirmed that (a) Fox Rothschild is
16 counsel for Debtor, (b) Fox Rothschild has not and is not acting as counsel for me, (c) I have
17 been provided with the opportunity to seek the advice of my own counsel, (d) I have not relied
18 on any statements or opinions made by Fox Rothschild, (e) there is no attorney-client
19 relationship between me and Fox Rothschild, (f) Fox Rothschild's undivided loyalty is owed
20 exclusively to Debtor, and (g) any actual or potential conflicts of interest between me and Fox
21 Rothschild have consensually been waived.

22 32. Fox Rothschild also received a disbursement, for the benefit of Debtor, in the
23 amount of \$150,000. The disbursement was part of proceeds of a loan from Umbra Partners,
24 LLC ("Umbra Partners"), to Debtor. Debtor instructed Umbra Partners to disburse \$150,000 to
25 Fox Rothschild as a retainer for Chapter 11 bankruptcy restructuring services for Debtor's
26 benefit. The \$150,000 disbursement was made from the bank account of South Providence
27 Holdings, LLC, an affiliate of Umbra Partners. Fox Rothschild is under no obligation
28 whatsoever to repay Umbra Partners, or any of its affiliates, any of the amounts Fox Rothschild
received as a disbursement from the loan proceeds, which was made for Debtor's benefit. In

1 connection with Debtor's loan from Umbra Partners and Debtor's Chapter 11 bankruptcy, both
2 Debtor and Umbra Partners have acknowledged and confirmed that (a) Fox Rothschild has not
3 and is not acting as counsel for Umbra Partners, (b) Umbra Partners is represented by its own
4 counsel, (c) Umbra Partners has not relied on any statements or opinions made by Fox
5 Rothschild, (d) Fox Rothschild's undivided loyalty is owed exclusively to Debtor, (e) there is no
6 attorney-client relationship between Umbra Partners and Fox Rothschild, and (f) any actual or
7 potential conflicts of interest between the parties have consensually been waived.

8 33. Debtor believes that the appointment of Fox Rothschild as Debtor's general
9 bankruptcy and reorganization counsel is in the best interest of Debtor and its estate.

10 34. Debtor seeks an order pursuant to Bankruptcy Code sections 327(a) and 329, and
11 Bankruptcy Rules 2014(a), 2016 and 5002, and Local Rule 2014 authorizing the employment
12 and retention of Fox Rothschild as general bankruptcy and reorganization counsel to Debtor for
13 the purpose of prosecution of this Chapter 11 Case, as described below, effective as of the
14 Petition Date, in accordance with Fox Rothschild's normal hourly rates and reimbursement
15 policies.

16 35. Debtor has selected Fox Rothschild as its general bankruptcy and reorganization
17 counsel because of Fox Rothschild's extensive experience and knowledge in the field of debtors'
18 and creditors' rights and business reorganizations under chapter 11 of the Bankruptcy Code and
19 familiarity with the facts and circumstances surrounding this case. As such, Fox Rothschild is
20 uniquely qualified to represent Debtor's interests with respect to Debtor's businesses and
21 financial affairs and the potential legal issues that may arise in this case.

22 36. Debtor believes that Fox Rothschild is both well qualified and able to represent it
23 in this case in an efficient and timely manner and that such representation is in the best interests
24 of Debtor, its estate, and its constituents.

25 37. Debtor seeks Court approval to retain Fox Rothschild, at the expense of Debtor's
26 estate, to provide the legal services described herein that will be required to represent Debtor as
27 in this case.
28

1 38. The professional services that Fox Rothschild will render to Debtor may include,
2 but shall not be limited to, the following:

- 3 a. Advising Debtor of its rights and obligations and performance
4 of its duties during administration of this Bankruptcy Case.
- 5 b. Attending meetings and negotiations with other parties-in-
6 interest in this Chapter 11 Case.
- 7 c. Taking all necessary action to protect and preserve Debtor's
8 estate including: the prosecution of actions, the defense of any
9 actions taken against Debtor, negotiations concerning all
10 litigation in which Debtor is involved, and objecting to claims
11 filed against the estate which are believed to be inaccurate.
- 12 d. Negotiating and preparing a plan of reorganization, disclosure
13 statement and papers and preparing for and attending court
14 hearings related thereto.
- 15 e. Representing Debtor in all proceedings before this Court or
16 other courts of jurisdiction over this case; including, preparing
17 and/or reviewing all motions, answers and orders necessary to
18 protect the interests of Debtor.
- 19 f. Assisting Debtor in developing legal positions and strategies
20 with respect to all facets of these proceedings.
- 21 g. Preparing on behalf of Debtor necessary applications, motions,
22 answers, orders and other documents; and
- 23 h. All other legal services for Debtor, as may be necessary.

24 39. Subject to the Court's approval under Bankruptcy Code sections 330(a) and 331,
25 compensation to Fox Rothschild will be payable from Debtor's estate, which shall be liable for
26 such compensation, on an hourly basis, plus reimbursement of actual, necessary expenses and
27 other charges incurred by the Firm.
28

1 **H. Application for an Order Pursuant to Sections 327, 328, 1107 and 1108 of the**
2 **Bankruptcy Code, Bankruptcy Rule 2014 and Local Rule 2014 Authorizing**
3 **the Employment and Retention of Province Real Estate Advisors, LLC, as**
4 **Financial Advisor to Debtor, Effective as of the Petition Date**

5 40. Debtor has determined that it requires financial advisory services. On October 15,
6 2010, Debtor duly selected and engaged Province to provide such financial and restructuring
7 advisory services. On December 5, 2010, Debtor entered into a new engagement letter with
8 Province that provided for expanded financial advisory services.

9 41. Debtor submits that it is necessary to employ Province as its financial advisors in
10 order to ensure that the interests of Debtor are adequately represented in an efficient and
11 effective manner. Debtor believes that, in light of Province's involvement in corporate
12 restructuring in many similar matters and the provision of prepetition services to Debtor,
13 Province is best suited to continue to provide financial and restructuring advisory services to
14 Debtor, and Debtor will rely on Province in that regard.

15 42. Debtor respectfully requests entry of an order authorizing and approving Debtor's
16 employment and retention of Province to perform the financial advisory services set forth in the
17 engagement letter dated December 5, 2010 (the "Province Engagement Agreement"), effective
18 as of the Petition Date. A true and correct copy of the Province Engagement Agreement is
19 attached hereto as **Exhibit 3**.

20 43. Debtor selected Province because of its excellent qualifications and its reasonable
21 fee structure.

22 44. In providing prepetition services to Debtor in connection with this matter,
23 Province's professionals have worked closely with Debtor's management and other professionals
24 and have become well-acquainted with Debtor's operations, debt structure, creditors, businesses
25 and operations, and other related matters. Province has developed significant relevant
26 experience and expertise regarding Debtor that will assist it in providing effective and efficient
27 services in this Chapter 11 case.

28 45. Province has acted as a liaison between Debtor and its secured and unsecured
creditors, participating in numerous discussions with parties in interest to drive consensus and

1 effectuate a reorganization plan. Specifically, Province's professionals participated in extensive
2 negotiations with Debtor, certain of Debtor's secured lenders and with potential new capital
3 providers, which successfully resulted in the out of court resolution of two commercial property
4 loans, and the consummation of a new prepetition loan that funded the preparation and filing of
5 Debtor's chapter 11 bankruptcy proceeding. Additionally, such prepetition lender and other
6 capital sources are in the process of completing their due diligence with Province's assistance
7 with a goal to provide the emergence financing for Debtor.

8 46. Province, in its capacity as financial advisor, advised Debtor with respect to all of
9 the documentation necessary for an early Chapter 11 filing and a seamless transition into
10 bankruptcy. Province's prepetition involvement has provided Debtor with continuity throughout
11 the Chapter 11 process.

12 47. Since October 15, 2010, Province has assisted Debtor in connection with its
13 restructuring efforts through, among other things, the following:

- 14 a. Evaluating its liquidity and in the preparation of a rolling
15 thirteen week cash flow forecast;
- 16 b. Preparation of evaluating their entire rent roll and in the
17 preparation of a 5 year cash flow forecast;
- 18 c. Evaluating the tax implications of various options for
19 restructuring;
- 20 d. Formulation, evaluation and implementation of various options
21 for restructuring; and
- 22 e. Negotiations with creditors and other appropriate parties.

23 48. An experienced financial advisor such as Province fills a critical need that
24 complements the services offered by Debtor's other restructuring professionals. Debtor believes
25 it requires the services of a capable and experienced advisory firm such as Province because,
26 *inter alia*, Province's resources and capabilities together with its experience advising Debtor
27 prepetition, are crucial to Debtor's success in this Chapter 11 Case.
28

1 49. Accordingly, Province is well qualified and positioned to provide the services
 2 being sought by Debtor and has developed significant relevant experience and knowledge that
 3 will assist in dealing with potential issues that may arise in context of Debtor's Chapter 11 Case.
 4 Debtor respectfully submits that the employment and retention of Province is in the best interests
 5 of Debtor and the estate.

6 50. As more fully set forth in the Province Engagement Agreement, Debtor proposes
 7 to employ and retain Province to render all necessary financial and restructuring advisory
 8 services to Debtor that may be required, including, but not limited to:

- 9 (a) assist Debtor in evaluating its liquidity and in the preparation of a
 10 rolling 13-week cash flow forecast;
- 11 (b) assist in the formulation, evaluation and implementation of various
 12 options for restructuring;
- 13 (c) assist Debtor in negotiations with creditors and other appropriate
 14 parties;
- 15 (d) assist in the preparation of any statements and schedules or other
 16 first day motion supporting documentation
- 17 (e) if necessary, participate in hearings before the bankruptcy court
 18 with respect to matters that are within Province's area of expertise
 19 or on information that Province has prepared or upon which
 20 Province has provided advice;
- 21 (f) assist in the preparation of any financial projections or budgets;
- 22 (g) develop a liquidation analysis to be used for the best interest of
 23 creditors test;
- 24 (h) provide financial advisory services to Debtor in connection with
 25 developing, and seeking approval for, a restructuring plan (a
 26 "Plan");
- 27 (i) testify at the Plan confirmation hearing, if necessary;
- 28 (j) provide contingency planning and ongoing advice and assistance to
 management through the restructuring process;
- (k) if necessary, assist in preparing an offering memorandum, with any
 amendments and supplements thereto, for distribution and
 presentation to prospective purchasers or creditors;

- (l) assist in soliciting interest in a transaction among prospective purchasers or creditors;
- (m) assist, as necessary, in any claims analyses or reconciliation;
- (n) assist in evaluating proposals received from prospective purchasers or creditors;
- (o) assist in the preparation of periodic reporting required by the Bankruptcy Court and/or the US Trustee; and
- (p) other activities as are approved by Debtor and as agreed to by Province.

51. In light of Province's expertise in all of these areas, Province is well-qualified to perform these services and assist Debtor in this Chapter 11 Case.

52. To the best of Debtor's knowledge, Province is a "disinterested person" as that term is defined in Section 101(14) of the Bankruptcy Code, as modified by Section 1107(b) of the Bankruptcy Code, and does not hold or represent an interest materially adverse to Debtor's estate.

53. I believe that Province:

- (a) is not a creditor or insider of Debtor;
- (b) does not hold or represent an interest adverse to Debtor;
- (c) is a "disinterested person," as defined by section 101(14) and modified by section 1107(b) and used in section 328(c) of the Bankruptcy Code;
- (d) does not represent any other creditor, party in interest, or entity in this Chapter 11 Case; and
- (e) has no connection with Debtor, its creditors, or other parties in interest in this Chapter 11 Case, except as set forth in the Huygens Verified Statement.

54. Province's willingness to continue with this engagement to advise and assist Debtor is contingent upon its ability to be retained in accordance with its customary terms and conditions of employment, including without limitation the indemnity provisions stated in the Province Engagement Agreement, and compensation for its services and reimbursement for the expenses it incurs in accordance with its customary billing practices.

1 55. Debtor seeks to employ and retain Province on an hourly basis at rates consistent
2 with those Province routinely charges in comparable matters. Additionally, upon confirmation
3 of a bankruptcy plan, Debtor agrees to pay a fee to Province in the amount of \$200,000, which
4 Debtor believes is reasonable.

5 56. Prior to the Petition Date, Debtor's subsidiary, South Tech Lake Mead W9420,
6 LLC, provided Province with two properties, valued at \$166,085, as payment for Debtor's
7 prepetition services. \$151,068.11 was deemed earned and applied to prepetition fees and
8 expenses incurred by Province. The balance of the unearned retainer under the October 15, 2010
9 engagement letter is \$115,016.89.

10 57. On December 4, 2010, Debtor also paid Province a retainer in the amount of
11 \$100,000. The retainer was funded from the proceeds of a promissory note made by Debtor to
12 Umbra Partners. Pursuant to Debtor's instructions, Umbra Partners disbursed \$100,000 to
13 Province for the benefit of Debtor, as a retainer to be applied towards postpetition services to
14 Debtor. The \$100,000 disbursement was made out of the account of South Providence Holdings,
15 LLC, an affiliate of Umbra Partners. Province is under no obligation to pay Umbra Partners or
16 any of its affiliates, any of the amounts Province received from Umbra Partners, which were
17 made for the benefit of Debtor. Currently, the total retainer available for services to be rendered
18 to Debtor postpetition is \$115,016.89. Province has not received any other compensation from
19 Debtor or any other party in interest in connection with this Chapter 11 Case.

20 58. Debtor respectfully submits that the proposed fee arrangement with Province, as
21 set forth above, is (i) similar to fee arrangements that have been authorized in other Chapter 11
22 cases in which Province has rendered services, (ii) reasonable in light of industry practice and
23 similar to market rates both in and out of Chapter 11 proceedings, (iii) reasonable in light of
24 Province's experience in reorganizations, and (iv) reasonable in light of the scope of work to be
25 performed pursuant to its retention. Debtor believes that, given the nature of the financial and
26 restructuring advisory services to be provided by Province, the proposed compensation
27 arrangement is both fair and reasonable.
28

